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Hughes's Queries.

OR,

Choice *CASES*

FOR

MOOTS,

Containing

Several **Points of Law**, not Resolved in the Books.

Being very Useful for the *Students* of the Common Lawes.

Collected by *William Hughes* Esq; Late of the Honourable Society of *Grayes-Inn*.

Disputandi pruritus, legum Clavis.

LONDON, 16.

Printed for *George Dawes*, and are to be sold at his Shop over against *Lincolns-Inn* Gate in *Chancery-Lane*. 1675.

IX
1893q

Rec. Oct. 11, 1882

To the Students of the Honourable Society of *Grayes-Inn*, and of the reſt of the Honourable Inns of Court.

Gentlemen,

THE *Collector of theſe Caſes has given great Teſtimony of his* Induſtry *for the Publique, by the ſeverall Pieces he made publick in his life-time, and by ſome Others which will ſoon be publiſhed. And thereby has ſhewn his Laborious Endeavours for the Service both of the* Profeſſors *and* Students *of the* Common Law *of* England.

And well conſidering how much the well performances of private Exerci-

ſes in the Inns of Court *Conduce to the more Elaborate and Publick Arguings in* Weſtminſter-Hall, *and finding that moſt of the* Moot-Caſes *(already abroad) are Judicially Reſolved, or by frequent Debates rendred Eaſie to determine, he hath (in the Series of his Studies) obſerved theſe* Quæries *and* Caſes, *and Collected them into this Body with ſpecial regard to the Younger Controvertiſts, who often find it more difficult to make a* Caſe, *then make an* Argument.

It is true, They received not his Ultimam manum, *and ſo (perhaps) that poliſhing he Intended; yet are thought fit to be Communicated for uſe, untill other Obſervers ſhall give other Supplies.*

If any thing in them appeares amiſs, It is hoped the Ingenuous Student will bear with it, ſince Old Age or Death prevented Amendment.

Vale.

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CAse 27, line 3. to her, read, takes. l.4. add, ~~rendring Rent.~~ page 37. line 17. adde, divoice onely. l.22. for, had, r. made. Case 36. l.8. for *to*, r. *and*, *Enter*, pa.10. l. ult. for, *personal*, r. *special*. Case 12, l.17. for *as*, r. *all*. p.14. l.5. after *Feoffee*, adde, *had dyed without Heir*. pa.18. l. *penult*. for, *brings*, r. *should bring*. Case 18. l.13. for, *remainder*, read, *reversion*. Case 22. l.4. for, *secureth*, read, *Licenseth*. pa.75. for *Case* 38. r. 60. pa.104. l.2. for, *those*, read, *their*. pa.106. l.18. read, 6 E.6.14. pa.117. l. *penult*. for, *F.* read *F.*

Moot

Moot Cases.

Case 1.

THree Copyholders in Fee are; One of them releaseth to another of his Companions. Quest. 1. How this shall enure.

Two Questions may be moved; One at the Common Law: viz. If three Joyntenants are, and one of them releaseth to another of them generally, If he shall have Fee? I conceive not; for that

the release is by mitter de le estate: But otherwise if the Release had been to them both; for that that enures by way of Extinguishment.

Question 2. If this Release be good to extinguish the Estate? I conceive it is not good, but is clearly void to transfer the customary Estate; But it ought to be by him who is in by surrender, and without surrender, the Copyhold estate cannot be transferred: and therefore it was adjudged in the Kings Bench, That a Copyhold Estate cannot be altered by a Bargain and Sale, or by Grant.

Case 2.

GRantee of a Rent Charge in Fee, grants the same over upon Condition, and afterwards enters upon the Tenant of the Land, and makes a Feoffment

ment in Fee of the Land, the Condition is broken; The point is, If against this Livery he shall take advantage of the breach of the Condition? I conceive he shall not: Quære, for the Tenant of the Land shall not hold the Land discharged: But yet it shall go in the avail of the Grantee that he shall hold it without Condition: But yet I agree in this Case, That although a Right, Title, Condition or Action cannot be granted; yet by a Feoffment of the Land it self, they may be all extinguished. Also there may be a difference in the Cases, viz. where the Condition is to be performed on the part of the Grantor; and where on the part of the Grantee; for in the first Case the Condition shall be destroyed by the Livery: but not in the last.

Case 3.

A Lessee for years upon Condition to have Fee, he makes his Executors and dyeth; the Executors performe the Condition: Question, If they shall have Fee? I conceive they shall not; for the Condition ought to accrue in the Life of the Lessee; But if in such case the Lessor dyeth, and the Lessee perform the Condition, the Fee shall accrue; But the Fee in the hands of the Executors cannot accrue, because it is an hereditament which cannot be to Executors: But if Executors have a villain as Executor, and he purchaseth Lands in Fee; the Lands purchased shall go to the Executors, in their own right; but it shall not be Assets.

Case

Case 4.

LEssee for life makes a Feoffment upon condition, the Lessor dyeth without heir; the Lessee for life enters for the condition broken. Quest. If the Lord shall have the Reversion by eschеat. Quære, for it is a good case, without authority in Law. I agree, that if the Tenant maketh a Feoffment, and dyeth without heir, there shall be no eschеat; for there is a Tenant by title.

If tenant for life maketh a Feoffment upon condition, and enters for the condition broken, he shall be but tenant for life, and reduce the old reversion; But if Tenant for years makes such a Feoffment, and enters for the condition broken, he shall be seised in Fee.

Case 5.

LEssee for life of a house and Free-hold Land, his Lessor seised of another house Copy-hold, they both joyn by Indenture; in which the Lessee covenants to repair and uphold the houses; The Copy-hold house is in decay and not repaired; Question, If both the Lessors or the one only, shall have an Action of covenant? Quære.

Case 6.

GRandfather, Father, and Son; the Grandfather dyes, a stranger abates, the Father Releaseth to the Abator all Actions, and dyeth: Quest. If the Son shall be barred of his Writ of Aiel? I conceive not; For although that the Writ of Mordaunceit' be released by the Father

Father which the Law gave him for the wrong done in his time; yet the Writ of Aiel which is due to the heir for the wrong after the death of his Father, the Father cannot Release.

Case 7.

A Rent is granted to one and his heirs, to commence after the death of the grantee; he dieth; Quest. If it shall be Assets to the heire? I conceive it is Assets, because the Father had the Fee in it to grant, although not to take the profit of it: Quære, if in such case, the wife of the Grantee shall be endowed of it.

Case 8.

TWo Joyntenants in Fee are disseised; the disseisor cuts

down Trees upon the Lands; the Joyntenants make their Executors & dye; the heire of the survi-ving Joyntenant entreth: Quest. who hath right to the Trees, bon case? I conceive, that the heire of the survivor shall have them.

Case 9.

A Woman lessee for yeers; the lessor releaseth to the husband Habendum to him and his Executors for the life of J.S. the husband dyeth, his Executors enter; a disseisor enters, and sowes the Land, J.S. the Cestuy que vy dyeth. Quest. who hath right to the Emblements. A good case, Quære.

Case 10.

Two Joyntenants, one of them being an Infant makes a Feoffment of the whole & dyeth. Quest.

Quest. If the survivor may have Dum fuit infra ætatem? I conceive, that if an Infant makes a Feoffment, that during his nonage, he himself may enter, but he shall not have a Dum fuit infra ætatem until his full age; and that his heire may enter, or have Dum fuit infra ætatem; But that the survivor cannot have Dum fuit infra ætatem, because the same is given to privies in blood, and is a priviledge incident to the person and not to the estate, and therefore shall not go to strangers: But if two Joyntenants Infants be & one maketh a Feoffment of the whole, I hold that his companion may enter into one moiety.

Case 11.

LEase for life, the remainder in Fee upon condition, that if a stranger being a Bastard, pay

to the lessor 10 l. within one yeer, that his right heirs shall have an estate for the life of J.S. after the death of the first Tenant for life; the 10 l. is paid, the stranger dyeth having issue a daughter, his wife with child with a son, the tenant for life dyeth, the daughter dyeth, he in the remainder in Fee entreth, the son is born living J.S. Cestuy que vy: he in the remainder brings Assise: In this case there are principally two Points: First, When a man makes a lease for life the remainder in Fee upon condition, that if a stranger pay 10 l. that he shall have an estate between the first tenant for life and him in the remainder, if this be a good condition to establish the said interposed estate? And, I conceive, it is not. Secondly, In this case, If the son afterwards born shall devest the estate of him in the remainder as a personal occupant; these words

words (right heirs) being words of purchase: I conceive, that he shall. Quære, for it is a good point.

Case 12.

A Man makes a lease to A. for his life, and for the life of his wife, and for the life of their son within age, for a certain sum of money, and rendring a Heriot, after the death of every tenant; and takes an obligation of A. for the whole sum 200 l. A. is felo de se; the lessor seiseth the Heriot, and afterwards the Almnor in the right of the King demands the Heriot. Quest. Who hath best right to it? I conceive, that the Almnor, for the title of the King shall be preferred before the title of a Subject, and by the Felony as the goods were the Kings and not the tenants: and in this case, I hold the lessor is without remedy for the

the 200 l. in Law. Quære, If in Equity, against the Occupiers of the Land; and I conceive, the lessor hath done well to enter after the death of A. and made himself Occupant.

Case 13.

A Copy-holder in the presence of the Lord doth surrender his Copy hold unto the use of J. S. and his heires, the Lord refuseth to admit Cestuy que use; Cestuy que use makes a surrender to the use of J. D. and his heires; and the Lord doth admit J. D. Quest. In whom the Copy hold doth remain? I do conceive in him who made the first surrender, for that the second surrender was void; because he who made, never had it. Quære, For that some are of opinion, that the Copy-hold is

Vide Mich. 14 Jac. B.R. Rosewel and Welches Case, Bulstrod 3. Part, 214.

is in J.D. For that it was said, that it hath been adjudged, That a Copy-holder may maintain Trespass against his Lord for his Copy-hold coming to him by purchase, before his Admittance.

Case 14.

A Man seised of Lands in the right of his Wife in fee, commits Felony before Issue; and that is found by Office: Quest. If the King shall have the Freehold? Or onely the perception of the profits of the Lands? I conceive, That the King onely shall have the perception of the profits, and that the land shall not escheat to the King, because the Wife is his Tenant by title. But if there be Lord and Tenant, and the Tenant is disseised, and the Disseisor dyeth without

Vide 31 Eliz. *Venables* and *Harris* Case.

without heire; the Lord shall enter for the Escheat, because he was in by tort. But if the Disseisor had made a Feoffment in Fee, and the Feoffee, it had been otherwise. And in the principal case I conceive, That if after the Attainder of the Husband the Wife also had been attainted, that the King should have but the perception of the profits during the life of the husband; for that during his life, the wife should not forfeit her Freehold.

Case 15.

A. Leaseth Tythes to B. rendring 20 l. per annum, the Remainder to the Executors of B. by Deed indented: B makes his Executors and dyeth: A. hings Debt; The Points in this Case are,

1. If Tythes may be Leased:

I conceive that they may. Vide 19 H. 6. & 20 E. 4.

2. If this be a Rent or not? I conceive it is not a Rent properly; but a Rent made by way of contract. Vide 22 H. 6.

3. What estate in this case the Lessee hath? And I conceive that he hath an Estate but for one year. Vide 41 Eliz. Sir *Edward Denyes* Case.

4. Admit, that it be but a Lease at will, If a Remainder may be limited upon it? And I conceive there may.

5. If a Remainder may be of Tythes?

6. If in this case, the Executors shall have them by way of purchase, or in the right of their Testator? I do conceive in the Right of their Testator. Vide 41 Eliz. *Sparks* Case.

7. There being no Rent due in the life of B, If an Action will lye for the Rent against the Executors?

cutors? I conceive that it will, in respect of the first contract.

Case 16.

LAnd is given to an Alien, and his Wife, and to the heirs of their two bodies begotten; A Statute is made, That all Leases made by them for 21 yeares upon which the Ancient Rent is reserved, shall be good against the King and all others. They make a Lease for 21 years in Possession, and another Lease for as many years in Reversion: The first Point in this case is, If the Alien and his Wife be joynt-tenants; and how the estate shall be settled. And I conceive, That the Estate shall be in the King during the life of the husband; and afterwards in the wife, and that they are joynt-tenants until the Office be found.

2. Point,

2. Point, If the heir of their two bodies shall take and inherit this Land. And I conceive that he shall not, because he cannot be heir to both.

3. If the Statute shall warrant this Lease in Reversion? And I conceive that it shall not.

Case 17.

The Lord of a Copyholder granted his Freehold of the Copyhold at will; The Copyholder cut down Trees and sold them; and afterwards he bought the Trees again, and with them re-edified the Copyhold Tenement which was in decay, the Lord dyed; his heir entred for a forfeiture. I conceive that his Entry was lawfull: For, 1. this sale of the trees after the cutting of them, although they were imployed in the Repair of the Copy Tenement afterwards, was a forfeiture.

forfeiture. 2. I conceive, That the Entry of the Heir was lawful after the death of his Father, because that the Lessee at Will, who was Dominus pro tempore, non intravit; Where the difference will be, Where a man hath a right of Entry, and that descends to his heir, as this Case is; But if the Seigniory had been granted over, if the Grantor hath not entred for the Forfeiture; the Grantee shall not enter for the same. And so it is where a man hath right of Action; As if Lessee for life or years commits Waste, if the Father who hings the Action dyeth, the Action being personal, is gone.

Case

Case 18.

LEssee for the life of another voucheth a stranger in a Precipe brought against him and recovers in value, Cestuy que vye dyeth, he in the reversion entreth into the Land recovered in value; Tenant pur auter vye, brings an Assise. Question, 1. What estate, Tenant pur auter vye hath by this Recovery in value, if for his own life, or for the life of Cestuy que vye? 2. If he in the Remainder may enter, or shall have a scire facias? 3. If Tenant pur auter vye had dyed during the life of Cestuy que vye; if he should be Occupant, or if Occupancy shall be of this estate recovered by act of Law.

Case

Case 19.

LEssee for the life of another man, the remainder to an Infant for the life of J. S. the remainder to J. S. for the life of J. D. the first Lessee and the Infant surrender the Land to [illegible] in the last remainder. The points in this case are:

If this surrender be good for both Estates, and how the same shall enure, in which the first Question is, If the last remainder to J. S. be good? because that his life is the Confine of the two last remainders. I conceive, that it is good, for although he cannot have the last remainder limited to him, the first being determined by his life, yet he hath the same to grant.

2. If this surrender made by both of them upon the Land be good, and how the same shall enure,

enure, because one of them is an Infant? I conceive, that it shall enure as a surrender by the Tenant for life, and as a confirmation by the Infant: Yet Quære, If the surrender be not void by the Infant, because it doth not take effect by livery of his hand?

3. Point. If Lessee for the life of another man surrenders to him in the Remainder for another mans life, If the same be good? I conceive, that it is, because he hath equal Estate Executory, to whom the surrender is made.

Case 20.

HUsband and Wife Joyntenants by entierties are disseised, the day of the Disseisin an Exigent of Felony is awarded against them, upon which they are Outlawed, the King pardons

the

the husband and wife; they enter the Lord of whom the Land is holden releaseth to the Husband and his heirs, the husband dyes, his heire enters; the Wife brings a Writ of Dower against the heire, and upon appearance is Nonsuited, and then she brings an Assise: The Points in this case may be these:

1. What shall be forfeited by the awarding of this Exigent?

2. If the pardon shall operate any thing to any thing which they lost by the Attainder, or only to make them capable, as they were before the Attainder?

3. If by the entry of the husband and wife, they were both Disseisors?

4. If the wife may now waive her Dower, and bring her Assise? For the last point, I conceive she cannot waive her Dower being in by her own wrong as Disseisor.

Case

Case 21.

A Man seised of two Acres, is bound in a Statute, and gives one Acre to the King, and deviseth the other to his Executors for the payment of his debts; the Conusee of the Statute sues execution against the Executors.

1. Point. If they shall have Audita Querela? I conceive that they shall: not to have contribution against the King, but to have the Land priviledged, so long only as the other part continues in the Kings hands, for this part is not absolutely discharged.

2. If the Executors shall have the Land as Fee-simple, as purchased, and what Interest they have in the same?

3. Admit that they have but a Chattel, If he who hath but a Chattel

Chattel shall have an Audita Querela?

Case 22.

TWo Tenants in common of a Mannor to which a villeine is regardant, one of the Lords secureth the villeine to present to a Church, being void; the villeine disseiseth a Tenant for life, the two Lords enter, the Lessee for life releaseth to that Lord who licenced the villeine to present. Question, How this Release shall enure? I do conceive it shall enure by mitter le droit for a moiety: for being but an Estate for life, it cannot enure to both by fractions. 1. I conceive, that it is not an Enfranchisement, because it is but a thing in action, and that this permission of the villaine to gain the Church to him by an Usurpation shall not enfranchise him. 2. I conceive, that

that in this case, the Tenants in common of the villeine, shall have the Land in common which the villein purchaseth and not joytly. And I hold, That if Executors have a villeine, and that they enter into Land purchased by him; that the same shall be Assets. Quære.

Case 23.

A Surrender is made for yeers of a Copyhold, the lessee makes his Executors and dyes. Question, If this lease shall be Assets in their hands, they being admitted? Quære. I conceive, this lease shall not be Assets, because it is not lyable to an Execution at the common Law: For it is against the custome that the Sheriff shall extend it, being a thing grantable by the custome: and the Executors are not chargeable to hold the lease, and

to pay so much in mony, unless they be chargeable of their own goods for their vitious plea, or upon a Devastavit returned; and I do conceive, That if a man be bounden in a Statute and hath a lease for years, and grants it over, that this lease in the hands of the grantee is not liable to the Statute.

Case 24.

LOrd and Tenant in Ancient Demesne by Fealty, a stranger takes Fealty of the Tenant, the Lord releases to the stranger upon condition, that if the Lord pay to him 10l. or a Horse before Michaelmas, at the election of the Releasee, that then he may enter; Michaelmas comes, the Lord enters; the Releasee brings Assise.

1. Point. If the Release to the stranger, upon condition, be good

good? and if such a condition can be annexed to a Release.

2. Point. If the Releasor must tender at the day the 10 l. or the Horse? I conceive, that he must, and that in this case the Releasee shall not do the first act to demand the one or the other.

Case 25.

A Man seised of Black-acre, and White-acre hath issue two Daughters; the Father and a stranger grants 10 s. Rent charge out of Black-acre to the eldest daughter, she brings a Writ of Annuity against the stranger, and hath Judgment to recover; the Father dies; both acres discend to the sisters, they make partition, Black-acre is assigned to the eldest daughter, White-acre is evicted from the youngest daughter, who prays in aid of the eldest and recovers

pro rata; the eldest distrains for 5 s. The Points are:

1. When the Father and a stranger grant a Rent charge of 10 s. out of Black-Acre the Land of the Father, If it be an Annuity for the stranger and a Rent-charge for the Father, and so shall enure as several grants of 10 s.

2. If by the Recovery of the youngest daughter pro rata of Black-acre, the Rent be so revived, that the distress is maintainable: because the youngest is in of the moity recovered, not by the recovery, but by discent.

Case

Case 26.

LEsse for life, the remainder to the right heire of J.S. the remainder to the right heires of the right heire of J.D. and J.D. die, an Infant being heire to both of them; the Lesse for life makes a lease to the Infant for his life: The Question is, How the same shall enure, by way of surrender, forfeiture, or how it shall enure? I conceive, it shall enure by way of surrender. Quære.

Case 27.

A Man and a Feme sole joynt-tenants for life, the woman to her husband; the other joynt-tenant releaseth to the husband upon condition of re-entry, the husband commits Waste.

1. If the Rent reserved upon the Release be good? I conceive

good if it enure by Entry and Feoffment; otherwise where it doth enure by way of Extinguishment, for that no Rent can be reserved but where an Estate doth pass.

2. Point. If the Recovery for Waste which over-reacheth the condition shall be preferred before it, and so the condition gone? I conceive that it shall.

Case 28.

TWo Disseisors make a lease for years to a woman, upon condition that her husband shall have Fee, the Disseisee releaseth to one of the Disseisors, the condition is performed.

1. Point. If the Release shall enure by Entry and Feoffment, or by Extinguishment? I conceive it cannot enure by Entry and Feoffment, because that the lease for years is an impediment

to

to make it passe by Feoffment because that there wants possession.

2. If the Fee shall accrue?

I conceive that the Fee may well accrue to the husband; for when the Lease was made to his wife upon that condition, the Lease was in the husband also as soon as it was in the wife, and the Land was his; and therefore there was sufficient privity.

Case 29.

A Man Covenants in consideration of blood to stand seised to the use of himself for life, the Remainder to the use of the Executors of his son: Quest. If it shall raise any use to the Executors? I conceive it shall not. Quære. If a man covenant to stand seised to the use of himself for life, the Remainder to the use of his Executors, That

in this case, the Executors shall take to the use of their Testator; But if a man covenant upon good Consideration to stand seised to the use of the Executors of a stranger; there the word (Executors) is a name of purchase, and they shall take to their own use.

2. Lessee for years takes a grant of a Rent-charge of his Lessor, If the same be a surrender? I conceive it is not, for that it is another thing: And it was adjudged in Gage and Peacocks Case in B. R. That if Lessee for years of a Mannor takes a Lease of the Bayliwick of the Mannor from his Lessor, that the same was no surrender, because it was collateral to the Land.

Case

Case 30.

TEnant in tail is disseised and dyed, the Disseisor makes a Gift in tail to the Issue within age, the remainder in Fee; 1. If it be a good Remainder? I conceive it is not a good Remainder, because that the Issue having a Right before the operation of the Livery, is remitted. 2. When the Issue in tail within age being a Woman, (the wife of the Tenant in tail being with child with a son) confirms to him in the remainder in Fee, and then a son is born, who dyeth without Issue, so as his Sister is his heir) If in this case the Sister shall avoid her Confirmation. Quære. If the Son in the life of his Father, makes a Lease for life, and his Father dyeth; he shall never avoid that Lease against his own

Livery; otherwise if he release, or confirm in the life of his Father.

Case 31.

IF a Disseisor makes a Lease for life, and the Lessee makes a Feoffment upon Condition, and the Disseisee releaseth to the Feoffee upon Condition, and the Lessee for life entreth for the Condition broken; What Estate he hath in the land, is the point?

I conceive that he shall have a Fee simple notwithstanding the Release to the Feoffee by the Disseisee.

If Lessee for years maketh a Feoffment upon Condition, and entreth for the Condition broken, he hath gained Fee by his Entry; But if Lessee for life makes a Feoffment upon Condi-

tion,

tion, and enters for breach of the Condition; he hath but for life.

Case 32.

A Rent-Charge is granted to a Feme-Sole and her Heires, without words for the Grantor and his Heirs; She takes Husband; The Husband and Wife bring a Writ of Annuity, and Declare, and are Nonsuit; and then are divorced Causa Adulterij; The Wife grants the Rent to another upon Condition, the Grantee for Arrearages in his time makes an Acquittance; the Condition is broken, the Wife distrains for the Arrearages entered before the Grant; If the Distress be maintainable is the Question?

In this case I conceive are these Points:

1. If the Declaration by the husband and wife in the Writ of Annuity, be an Election to make it an Annuity, and no Rent-Charge: And if this Act of the husband shall prejudice the wife in the Inheritance? And I conceive that it shall; for if he had elected to make it a Rent, then the wife had had a Fee-simple in it; but being an Annuity, she shall have but an Estate for life; And that upon this difference, viz. That the husband by matter of Record may prejudice the wife in her Inheritance, as in this case the Declaration doth; But if it be by matter of fact, then it is otherwise. As where two Coparcenors be, and the Husbands make Partition, which is very well, the same shall not prejudice the Wife in her Inheritance, but that after the decease of the Husbands, the Wifes may avoid the Partition.

2. If

2. If in this case, The Nonsuit shall alter their Election, and make their Count void ab initio. As in a Writ of Error; for after Nonsuit, the party may have a Writ of Error.

3. If the Divorce causa Adulterij makes the Marriage void ab initio; so as the Acts done by the husband, shall be as null as in cases of Divorce causa Consanguinitatis, & Præcontractus? I conceive it shall not; but as to Acts done after the Marriage, it makes them void from the time of the Divorce.

4. If the Acquittance made by the Grantee shall barre the wife of the Arrearages? I conceive it shall not.

5. If the Distresse had by the wife shall gain any Seisin of the Rent to the Wife; And I conceive that it shall.

Case

Case 33.

A Rem-Charge of 10 l. is granted to a man, or an Annuity of 10 l. at his Election: The question is, If it be grantable over? I conceive that it is, being in the Grantee without Election; and that these words (or an Annuity of 10 l.) are void words, for that so much is included in the Rem-charge; and that this is not to be compared to the Case in 17 E. 2. where a man grants unto another 20 l. or 10 l; for there nothing was in the Grantee before Election. But this Case may be compared to Southwell and Wards Case, which was 33 Eliz. in the Kings Bench, Where an Abbot granted to the Hospital of St. Gyles, 40 Loads of Wood in a great Wood, or a certain sum in lieu

lieu of it; in that case it is holden there was not any election. If a man grants to another his Black horse, or White horse, there must be an Election; But if the Grant were of the White horse, or of a Colt for it, there shall be no Election. And it was adjudged in the Dutchy Chamber, That if a man be enfeoffed of the Manor of D. or of an Acre parcel of the same; that in that case there needs no Election.

2. I conceive, That the Grantee for years or life of an Annuity, may grant it over, unless it be pro Consilio, or upon Confidence; and yet in such case it is grantable, if it be granted to one and his Assigns, Or to one and his Heirs, which implyes Assigns: But a Rent, of what Nature soever it be, I conceive the same is grantable over.

Case

Case 34.

A Man possessed of 3. Horses of equal value, grants one of them to J. S. a stranger takes one Horse; The Question is, If the Grantee may seize it? I conceive he cannot: For I conceive, That if a man gives to me Chattels transitory, or Moveables which are in France or Spain, that the property of them is in me presently to maintain Trespasse; But in this case, The Election makes the property, and that ought to take effect upon a privity which is destroyed in this case by the taking of the Stranger, and therefore no seizure can after be made of it by the Grantee: As if a man Lease Black Acre, or White Acre to a stranger, and before Election the Lessor be dis-

seised,

seised, the Election is destroyed for want of privity. Also in this case I conceive, That the Grantee shall not have Trespass, for that till Election he hath not any property in the thing. Quære, if the Election shall not have relation to settle the property in the Grantee from the time of the Grant: As if a Rent-Charge be granted to one and his heirs, and the Grantee makes Election to make it into an Annuity, the wife of the Grantee shall not be endowed of it; but if the heir maketh the Election, the same shall not prejudice the Wife of her Dower.

Case

Case 35.

THe heir of the Disseisor enfeoffs the heir of the Disseisee within age, and a stranger, upon Condition to re-enter upon not payment of 10 l. Quest. If the heir be remitted, to the whole, or but to a moyety. I conceive, but to a moyety, for that he hath right of Action, and not right of entry; but if part of the Land be conveyed unto him having right of Entry, he shall be remitted to the whole. And I conceive, That the heir of the Disseisee cannot have his Writ of Entry against the stranger, by these general words (of the Moyety) but it must be of so many Acres specially: And I do conceive, That if the heir of the Disseisor being in by Discent, enfeoffeth the heir of the

the Disseisee within age with Livery to the use of another; that in such case Cestuy que use shall take before the heir shall be remitted by the Statute of 27 H. 8. And I do conceive, That an Heir may waive a Discent, which is for his disadvaile.

Case 36.

LEssee for life, the Remainder to the right heirs males of the body of J. S. who hath Issue two Daughters, and dyeth; one of the Daughters hath issue a Son; The Lessee for life makes a Feoffment in Fee upon Condition to enter for the Condition broken after the death of the Daughter who hath issue; 1. Point, If the heir male of the Woman shall take by purchase. 2. If by the Feoffment upon Condition

Condition the contingent Remainder be destroyed notwithstanding the entry for the Condition broken.

If a man be disseised, and the Disseisor makes a Lease for life, and Tenant for life makes a Feoffment upon Condition, and the Disseisee releaseth to the Feoffee, and the Lessee for life entreth for the Condition broken, that he hath a Fee in the Land. Quære, if in such case the Release doth enure by way of Extinguishment, And if the Disseisor may enter upon the Tenant for life.

Case 37.

A Feoffment is made to an Infant of two Acres, of the one for life, of the other in tail, the Remainder of the two Acres to the

the right heirs of J. S; the Enfant maketh a Feoffment of one of the Acres; 1. Point, If that be an Election to have tail in that Acre? I conceive it is an Election, and shall conclude the Enfant at his full age.

2. Point, When the Remainder of these two Acres are granted to the right heirs of J. S; If by the Feoffment in one Acre, the Contingent Remainder be destroyed, or not, because the particular Estate of the other Acre doth remain, which shall support the Remainder. Quære.

Case 38.

LEssee for years of Lands by Deed, redelivers the Deed to his Lessor. 1. Point, If the same be a Surrender? 2. Lessee for life upon Condition, to

have

have Fee, makes a Lease for years, and then performs the Condition; the Lessee for life dyeth, so as the Fee accrues in his life-time, if his heir shall avoid the Lease for years, Quære.

Case 39.

LOrd and Tenant of Lands in Ancient Demesne, The Lord disseiseth the Tenant, and enfeoffeth his heir within age, the Tenant dyeth, a stranger enters upon the Heir; he re-enters: The Stranger brings an Assise at the Common Law; The heir pleads to the Jurisdiction of the Court. 1. Point, If by the Disseisin, and Feoffment, the Ancient Demesne be destroyed? 2. If by the Discent to the heir, and his Wayver within age to hold at the Common Law, the Ancient

Ancient Demesne Tenure be revived, admitting a suspension for a time? I conceive, 1. That the Tenure is destroyed by the Feoffment. And, 2. not revived by the Wayver.

Case 40.

A Man binds himself, his Heirs and Executors in an Obligation, and makes his Executors and dyes; and hath Assetts discended from the part of the Father, and also Assetts discended from the part of the Mother: The Obligee releaseth to one of the heirs all Actions: The Question is, If it shall be a discharge to the other heir, and to the Executors? And I conceive that it shall; For where a man hath not remedy for a thing but in Action, if he dischargeth the Action all is gone.

gone. And in this case, because that the party hath Election, which of the parties he will charge, if he determine his Election by Release, and makes him his Debtor; the Law shall discharge the other. As if a man hath a Rent-Charge, and Releaseth to the Grantor all Annuities, his Rent-charge is gone: And an Obligation is not Assetts, but a thing in Action till the money be recovered.

Case 41.

A Man seised of a Rectory in Fee takes a Lease thereof for 3. years from the King by Letters Patents; And after the years, makes a Lease of the Rectory for 100 years, by these words, viz. he Deviseth Rectoriam in Decimis, et omnibus Commoditatibus quibuscunq; The Lessee

Lessee puts in his Cattel upon the Glebe-Land, the Lessor distreins them Damage Feasant: 1. Point, If a man takes a Lease for years of his own Lands from the King, If the same be an Estoppel, and for what time? I conceive it is an Estoppel but for 3. years; for a Patent, or Inrolment, are but things recorded; and Records themselves as Fines are. 2. If by the Demise Rectoriam in Decimis et omnibus Commoditatibus, the Glebe which is parcel of the Rectory be Excepted? And I conceive that it is not; For that the same is contained as well on the word (Rectoriam) as in the words omnibus Commoditatibus.

Case 42.

A Leale is made to two for life upon condition to have Fæ; The one brings a Writ of Partition against the other, in which Judgment is given. Quest. If the Fæ may accrue? I conceive it cannot, because that the privity of the estate upon which the accruer is to be, is distrained by the act of one of the parties themselves. If Two make a Leale for years rendring Rent upon Condition to re-enter for non-payment, and they make Partition of the Reversion; the Condition is destroyed: and if Lessee for years be upon encreale, and he maketh his Executors, I conceive the estate may encreale in their hands; but otherwise it is of Administrators.

Case

Case 43.

A Man makes a Charter of Feoffment to A. and B. Habendum to A. for his life, and to B. for his life, and makes Livery to A. secundum formam Chartæ: Quest. How they shall take; and if as Joyntenants, or Tenants in Common. Quære.

Case 44.

A Man seised of 2. Acres makes his Will, and makes two Executors, and deviseth that his Land shall be sold; One Executor sells one Acre for 10l. to one, the other sells the same Acre to another for 20l; the heir sells the other Acre for another sum: Afterwards both the Executors joyn in a sale of both Acres to

another person, Ceux que Droit of the Vendees to the Acres.

Case 45.

GRandfather, Father, and Son, the Father disseiseth the Grandfather and dyeth; The Son in by discent and within age, enfeoffs two, to whom the Grandfather Releaseth with Warranty and dyeth: One of the joynt Feoffees makes a Lease to his Son for life upon condition, that if the Lessor or his Companion dye within the year, that he shall have but for two years; the Lessor dyeth within the year, the surviving Feoffee of the former ters; the Lessee for two years enters upon him. 1. If by the Lease for life by one joyntenant to his son, upon such a condition to have for years, the Joynture be severed, or saved and rejoyned by

by the performance of the Condition of Decreaser for years.

2. If there be Grandfather, Father and Son, and the Father disseiseth the Grandfather and dyeth, and the Son in by discent releaseth two to whom the Grandfather releaseth with Warranty: If the same shall be a barre to the Son within age of his Entry.

Case 46.

If S. seised of White Acre Deviseth the same to A. and B. upon condition that they shall devise the same to D. the Willein of B; B. deviseth his Moyety accordingly and dyeth having Issue E: D. the Willein enters; upon whom E. enters; The Willeine brings Assise; E. pleads the Disability of the person.

1. Point, If A. and B. are

Joyntenants, or Tenants in Common? I conceive they are Tenants in Common, otherwise the intent of the Devisor cannot be satisfied; For one joyntenant cannot devise his Moyety, as a Tenant in Common may. On the other side it may be said, That they shall be joyntenants, otherwise the words of the Will cannot be satisfied, as where the surviving joynt-tenant conveyes by devise the whole.

2. Point, If by the Devise of the Lord to his Villeine, he having the Land upon such a Condition, It be an Enfranchisement? I conceive it is not, because that the Lord is constrained to do it; but otherwise if he do it voluntarily: Yet if it be an Enfranchisement, the Villeine shall be enfranchised against the Son, and not against the Father.

Case

Case 47.

A. seised of White Acre, Leaseth the same to B. Habendum to his Executors for two years, and Livery accordingly; A. dyeth, his son and heir of the age of 18 years enters upon B. and enfeoffs C. Lesse for yeares reenters; C. brings an Assise: 1. Point, If B. hath an Estate for life or years; for if he hath an estate for life, then clearly the Assise will not lye. But I conceive, That he hath an estate but for years: For if a man makes a Lease to J. S. Habendum to his Executors for 20 years, this is a Lease for 20 years to J. S. to all purposes. So if a Lease be made to A. for years, the Remainder to his Executors for years, A. may dispose of that Lease.

2. Point, If by the Entry of the Enfant upon the Lessee, and his Feoffment over, and re-entry of the Lessee, the Reversion shall be reduced to the Enfant, or to the Feoffee; For if to the Enfant, then although that the Lessee hath but an estate for years, the Feoffee hath not cause to have Assise: But I conceive it shall be to the Feoffee; according to the Case which was adjudged in the Point 21 Eliz. the Lord Sturtons Case, notwithstanding that it was colourably objected, That the Reversion should be reduced to him who hath most right.

Case 48.

A Man seised of Black Acre, Covenants with J. S. upon consideration of 10 l. to stand seised to the use of the right Heirs of

of J. S. upon Condition, That if the Covenantor pay 100 l. to J. N. that the heirs of J. S. shall have but for 10 years; the money is paid within the 6 moneths, J. S. dyeth, the Deed is not enrolled: 1. If the words (Right Heirs) as this case is, is a word of purchase? 2. If Inrollment be necessary at all?

Case 42.

TEnant for life, the Remainder for life, the Remainder in Fee; The first Tenant for life grants his estate to him in the first Remainder for life by Indenture rendring Rent; he in the Remainder for life dyes; he in the Remainder in Fee enters, upon whom Tenant for life enters, upon whom a stranger enters and disseiseth him, to which stranger he in the Rema nder in

Fee releaseth; The first Tenant for life disseises for the Rent. 2. Points, 1. If he who hath a Rent out of Land disseiseth the Tenant of the Land, If the same shall extinguish the Rent? 2. If the Release by him in the Remainder to the last Disseisee, which enures by Entry & Feoffment, which purgeth the Land of all mean Rents, (admit that the Rent is but suspended) the Rent be revived.

Case 59.

I. D. makes a Lease for 3 years to a Feme Sole rendring Rent upon Condition to have Fee if she do not Attorne to a Grant of the Reversion before Michaelmas; The Lessor grants the Reversion to W, the woman takes the Lessor to husband, who payes the Rent to the Grantee; the

the Lease for 3. years expires, the Grantee enters; the husband and wife bring Trespass: 1. If the Acceptance of the Lessor to husband, be an Attornment, or the payment of the Rent by the husband to the Grantee? I conceive that it is by the submission of the Will of the wife to the Will of her husband, and so making him a party, who may Attorne. And in divers cases the husband and Wife are but one party; As where the husband shall be charged and named only; and not as Receiver by the hands of his wife, although that the thing be delivered to the Wife. Vide 1 H. 4. A man was bound to pay 100 l. to a woman, there the Question was, If the payment to the husband should be a performance of the Condition? I agree the Book in Bracebridges Case, That by the Marriage of the

the

the Lessor with the Lessee, the Terme is suspended, and not extinct, as it shall be, if a man Lessee takes to Wife the Lessor. And so it was adjudged in Sir Julius Cæsar's Case, Master of the Rolls, That whereas he had a Lease of an Hospital, and was made Master of the Hospitall; that the Terme was Extinct. But I agree, That although the Rent and the Reversion shall be in suspence to some purposes; yet it may be in Esse to make the payment an Attornment: As if a man grant the Reversion to the use of another, and Tenant for life surrendreth to the Grantee, although the same is not good to the principal intent as to be a Surrender; yet it shall be a good Attornment. So if a man by Writing deviseth Lands to A, and afterwards by Word deviseth the same to B; although the

the same is void as to B, yet it shall be a good Revocation of the first Will.

2. Admitting that it be not a good Attornment, If the Fæ may accrue to the Woman after Coverture? I conceive that it may well enough, because the Husband by his Act, shall not prejudice the Wife in things of Inheritance.

Case 51.

A. makes a Lease for life of Black Acre to B, the Remainder to the right heirs of I. S, and grants a Rent to C. in Fæ, and gives seisin of it; B. grants and assigns his Estate unto A; C. demands the Rent at Black Acre, A denyes it; 1. Point, If the Grant and Assignment of the estate for life be a Surrender, and so the Contingent Remainder be

destroyed.

destroyed. 2. If by the Grant and Assignment, the possession of A. be presently chargeable; or it shall expect during the life of J.S?

Case 52.

A. Seised in Fee of Black Acre, makes a Lease for life to J.S, and afterwards confirmes the Land to J.S. and his wife, and the Survivor of them; J.S. dyeth, his Wife demiseth the Land to A. and B. his Wife for their lives; A. hath Issue C, who enters; B. claymeth in by Survivor brings Assise: 1. Point, If the wife takes any thing by the Confirmation, or takes as the general or special Occupant? I conceive that she doth not take any thing by the Confirmation, but she takes as Occupant, having the possession vested in her.

2. Point,

2. Point, If the Lease made by the Wife to the Lessor and a stranger for their lives, be a Forfeiture so as the heir of the Lessor shall avoid it? I conceive that it is not.

Case 53.

TEnant for life is disseised, the Lessor enters upon the Disseisor and makes a Feoffment; the Lessee for life re-enters, the Feoffee grants the Reversion; the Lessee for life surrenders to the Grantee and the Lessor; 1. Point, If by the re-entry of the Lessee for life he hath regained the Estate to the Lessor, or to the Feoffee?

2. Point, If this Surrender doth amount to an Attornment to the Grantee, and then to a Surrender to him; Or if it shall

be

be a Surrender to the Lessor, or to none of them?

Case 54.

A Lord of Lands holden in Socage hath a Villeine in grosse; and deviseth that his Executors shall sell that Land for the payment of his Debts, and dyeth: They sell the Land to the Villeine; The Lord hath a Daughter which is married to J. S. and had issue; J. S. dyeth; the Daughter the Seignioresse marrieth the Villeine and dyeth; her Issue entreth into the Land and makes a Feoffment of it, and seizeth the Villein; the Feoffee re-enters, the Issue brings Assise. 1. Point, If the sale of the Executors to the Villeine be an Enfranchisement.

2. Point, If the Intermarriage with

with the Milleine by the Seigniorelle be an Enfranchiſement? and if it be, If it be Temporal, or perpetual? For the 1. point, I conceive, that the ſame is an Enfranchiſement, for that the ſale of the Executors, is the ſale of the Teſtator himſelf. Quære. And for the ſecond point, I conceive that it is an Enfranchiſement perpetual, becauſe it was the voluntary Act of the Seigniorelle her ſelf.

Case 55.

TWo Joyntenants of an Acre of Land, One of them grants a Rent to his Companion, in Fee; the Grantee dyeth; his heir grants the ſame Rent in taile to the uſe of another in taile: 1. Point, If the grant of the Rent-Charge be good, either in the Original Grant, or upon the Survi-

vorſhip,

worship, admitting the same to be a suspension during the continuance of the joynt Estate? I conceive, that the Grant may be good Originally: As if he in the Reversion upon a Lease for life, or years, grants a Rent Charge, although the same cannot benefit the Grantee during the Lease to take the Cattel of the Lessee or of a stranger; yet the Cattel of the Grantor shall be presently distreined.

2. Point, If a Rent-Charge may be granted in tail unto the use of another in tail? And I conceive that it may, upon an expresse Limitation; but not by Act of Law.

Case

Case 56.

A Deviseth Lands to J.S and his Wife, and to the heirs males of their two bodies; and if they dye without Issue of their bodies, that the Land shall revert; The husband dyeth, the wife with Child entreats B; C. the right heir of the Devisor enters for a Forfeiture; a Daughter is born; the Feoffee enters upon the right heir, and he brings an Assise; 1. Point, If this Devise makes the heir male of the husband and wife only Inheritable, or the heir female also.

2. Point, Admitting that the heir Female be Inheritable, the wrong supposed by her Mother to be done as Tenant after possibility shall be purged.

Case

Case 57.

A Copyholder in Fee makes a Surrender to the use of another, to begin at a day to come for life, reserving Rent; and for non-payment, a Re-entry: The Surrenderor surrenders all his Interest in the Reversion to the Lord and his heirs; and the Rent being behind, the Question is, If the Lord may enter upon the Lessee by the Statute of 32 H. 8. which gives remedy to such to enter for Conditions broken; for whom the Common Law had not provided. 1. Point, If the Surrender to begin at a day to come, was good? or if it shall be void according to the Rules of the Common Law? For at the Common Law a man cannot make any Estate of Inheritance or of Freehold to begin at a day to come;

come, for avoiding of Abeyances which the Livery creates at the beginning, and the Law abhors idle Liveries, and to avoid these Mischiefs, hath Ordained Occupants: I conceive, that the Surrender for life shall be good, especially if it be warranted by Custome; For this is a Collateral thing, as for the husband to be Tenant by the Curtesie, or for a dissent to take away Entries in Copyholds: And I conceive, That none can be Occupant of a Copyhold, because that none can have it but by admittance: So there cannot be any Occupancy of a Rent, but the same for the life of Cestuy que vye, shall down in the Land. And this Copyhold Estate for life, being but an Estate at Will, may be granted over. Also I conceive, That this Reservation of Rent is good, although that after the surrender

surrender there be no privity betwixt the parties.

2. I conceive, That Copyhold Estates are not mentioned within the Statute of West. 2. For Copyholds at the Common Law, were of no validity. And it should be to the great prejudice of the Lord if they might be enducted. And of that Opinion was Popham Chief Justice; and so was the Opinion of Manwood Chief Baron in the Exchequer. And I do conceive, That if a Copyhold comes to the Lord by Escheat, or by Forfeiture, that he may by surrender grant the same to begin at a day to come.

Case

Case 58.

A Man marrieth a woman who hath a son; and he hath another son by the same Woman; The Husband seised of Lands in Fee deviseth the same to his wife for life, the Remainder to the next of her blood in Fee; the woman dyeth, the younger son dyeth having Issue 2. Daughters; The eldest son gives the land to the youngest Daughter, and to the Heirs of the body of the Father begotten, the Remainder to his right heirs: The youngest Daughter hath issue a son and dyeth; the son enters; the other Daughter takes Husband who enters, and the son brings Trespas: 1. Point, To which son the land shall passe by the Devise by the intent of the Devisor? I conceive

conceive it shall passe to the younger Son; for the Law intends that the Father doth more regard his own son, then the son of a stranger. Although it may be objected, That the Law would cast the Land upon the eldest son of the wife; if he had not intended the advancement of his eldest son.

2. Point, If Lands be given to the younger son, and the heirs of the body of the Father who is dead; If the Daughters shall take by purchase, or by discent? And I conceive, That in this Case they shall take by discent, although that the land was never in the Father, and that per formam Doni. As if Lands be given to one and the heirs females of his body, and the Donee hath issue male and female, and dyeth, the Female shall have the land, and yet she was not his Heir:

an

and that onely per formam Doni.

Case 59.

THe Conusee of a Statute, hath the Land in Extent, and assigns the same over by Lease for a lesser time, and then he Cancels the Statute; The Conusor enters upon the Assignee, and he brings Ejectione firmæ: 1. Point, If by the destruction and cancelling of the Statute, the Estate of the Assignee be gone? As if a Parson makes a lease for years, and afterwards resigns, his lease is gone, 14 H. 8. I conceive that it is gone; and that I conceive upon this difference. Where the thing out of which another thing is derived is utterly destroyed, (as in this case the duty is by the cancelling of the Statute) there of necessity

the thing derived shall be destroyed, viz. the Estate of the Assignee, although that a third person hath interest in it: But if the thing be permanent, the party by his Act cannot prejudice a third person: As if Lessee for life grant a Rent-Charge, and afterwards surrenders, because that the Land remains in the hands of the Lessor permanent and firm, the same shall be charged.

2. I conceive in this case, That although that the Conusee himself shall have an Assise against him who enters upon him, and his Executors also after his death, as appears by F. N. B. Yet his Assignee shall have an Ejectione firmæ especially in this Case, where the Term extended is not ended by effluction of time, but by the Act of the Conusor as this case is; Or by Casualty, scil.

by

by extraordinary profit found in the land within the time of the Extent: For in these two Cases, the Conusor ought to sue forth a Scire facias; but in the other case he may enter.

Case 38.

A Man seised of the Mannors of Dale and Sale, Deviseth unto A. and B. et hæredibus the Mannor of Dale, una cum the Mannor of Sale: A. dyeth without heir, B. survives, and is disseised by C, who is disseised by D. and E; B. releaseth to D, who ousts E; he brings an Assise: I conceive it is not maintenable.

1. Point, I conceive, that by the Devise to A. and B. et hæredibus, that this is a good Fee-simple to both, and that they are

Joyntenants, and not Tenants in Common, against the Opinion of Audley, in Temps. H.8.

2. I conceive, That these words, Una cum the Mannor of Sale, are in the Copulative, and shall make Sale to passe for such estate as the Mannor of Dale; and that it is but one sentence: but otherwise it had been, if the words had been, Item, I Devise my Mannor of Sale; For that every Item begins a new sentence.

3. How the Release shall enure? I conceive, It shall enure by Entry and Feoffment for that the Estate of the Releasee was tortious: But otherwise, If the Releasor had been Tenant for life, for then it should have enured to both, otherwise by his Release he should do wrong and Forfeiture; which the Law will not admit, if by another way it may be taken.

Case

Case 61.

A. Seised of Black Acre, and White Acre, leaseth Black Acre to J. S. and gives White Acre to J. D. and his heirs, rendring 20 l. Rent by Indenture; J. D. payes the Rent, and dyes; an Assise is brought against the heir who hath nothing but White Acre by discent: 1. Point, If this Rent shall issue out of both Acres? I conceive, That the Rent shall issue only out of white Acre, because that a Rent in Fee cannot issue out of a Chattel; but yet for the time the Lessor shall distrain in the Term, as if a rent be granted out of Back Acre, with a Distresse for it in White Acre.

2. If the Heir shall hold the Land discharged, Quære; for it

is mischievous, that the Heir should be charged with so great a Rent.

Case 62.

A Rent was granted to one and his Heires so long as J. S. should have heirs of his body, the remainder to the right heires of the Grantee; The Grantee endowes his Wife ad Ostium Ecclesiæ of the rent, and afterwards exchanges the Rent for the Land out of which the same is issuing; the wife elopes, the Grantee dies; Ceux que Droit to the Rent, and to the Land. I conceive, That the heir of the Grantee shall have the Land; and he who was Tenant of the Land shall have the Rent: and that the Wife by her Elopement shall lose her Dower, although it is Dower ad Ostium Ecclesiæ, because it comes in lieu of

of Dower at the Common Law, and so the Freehold is not in the Wife during the life of the Husband, as in case where a Wife hath a Joynture after Coverture: And it is not like where a Woman hath a Joynture before Marriage. Also I conceive, that in this Case the Exchange is good.

Case 63.

A. Makes a Feoffment to the use of himself for life, and afterwards to the use of the Woman he intends to marry when he shall be married: He and the Woman after Marriage joyn in a Fine Sur Conusans de Droit, &c. of this land: A. dyeth; the wife entermarrieth with J.S. and afterwards she brings a Writ of Dower against R. son of A. to be endowed of other Lands not

contained within the Fine.

1. Point, I conceive the same to be a Joynture before Coverture, being made before Coverture to the use of the Woman which A. intends to marry, notwithstanding the subsequent words, and to be within the Statute of 27 H. 8. of Joyntures.

2. Admitting the same to be within the Statute, and to be a Joynture after Coverture, yet by the joyning of the wife in the Fine, I conceive she shall be concluded to demand any Dower after such Fine.

Case 64.

LOrd, Mesne, and Tenant of an Advowson in grosse; The Mesne holdeth by Knights Service, the Tenant in Socage; The Tenants grants the Advowson

in Frankmarriage; The Yesne releaseth to the Tenant; The Issue in the 4th degree hath issue 2. Daughters, they make Partition, the Donor presents, the Incumbent grants his Estate to the King, who leaseth the same over; the eldest daughter confirms at full age and dyes without issue; the younger daughter presents, and her Clerk enters upon the Termor; and he brings Trespas: And I conceive, that it is not maintenable: 1. Point, If an Advowson in grosse doth lye in Tenure? And I do conceive that it doth, because it was once appendant to Land.

2. Point How the Advowson shall be holden by the Daughters in the 5th degree? I conceive, that it shall be holden of the Donor who accepted of the Release, and that it shall be holden of them in Knights Service.

3. Point, If the Daughters shall be in Ward for this Tenure, because that their Aunte-stor did not dye in Homagio, but held by Fealty onely? And I conceive, That they shall be in Ward notwithstanding that.

Case 65.

I. S. surrenders White Acre into the hands of the Lord unto the use of J. D. his Villeine for the life of A. and B unmarried; The Lord admits him and takes a Fine of him of 20s; the Villein enters; A. dyes, the Lord enters, upon whom the Villein enters, and the Lord brings Assise: 1. Point, If the Lord admit his Villein to a Copyhold upon the surrender of another, If this be an Enfranchisement? I conceive not. Quære, If the Copyhold

Copyhold were Escheated to him. The same Law, If the Lord makes his Villeine his Executor: Or if the Bishop had admitted his Villeine upon the presentment of another; But the presentment of the Villein by the Lord to an Advowson, will Enfranchise him.

2. If a Surrender made to one for the life of A. B. not married, and A. dyeth, whether the Estate doth continue? And I conceive that it doth, for that part of the limitation doth remain, and Grants shall be taken strongly against the Grantors.

Case 66.

A Man makes a Lease for life to the King; and after grants the Reversion to another; If good without Attornment of the

the King, for that he is not compellable to Attorn: And upon this lease the Lessor may reserve a Rent upon Condition of Reentry, and the Reservation is good: But he cannot distrain for it, for it is not a Rent-Service, because the King cannot do Fealty; but this is a Rent due of Common Right: And in this case, If the King cõmitteth Waste, he in the Reversion hath not any remedy; for the King is not within the Statute of Gloucester, for he is not named in the Statute: But if the King grant a Reversion, the same is good without Attornment, for the act of the Subject shall not be in derogation of the Grant of the King.

Case

Case 67.

A Bishop is Lord, and a Bishop is Tenant; The Lord usurps upon the Tenant: Question, If an Usurpation be Mortmaine? I conceive it is. Vide 47 E. 3. 10. & Vide 26 Ass. An Abbot recovered in an Assise against another, and it was holden Mortmain, and a Writ issued to enquire of the Collusion.

2. If two do usurp unto an Advowson of Church, and the Patron doth Release to one of them; If he shall hold his Companion out?

I conceive that he shall not; for that the wrong was not done by them only, but by the Admission and Institution: and that is the reason, That although the King cannot be a Disseisor, for he

he cannot do wrong; Yet he may have a Church by Usurpation, as well as another man may usurp upon him. And none can defeat the King of any real thing; nor he any other man.

Vide 35 H. 6. 61. acc.

Case 68.

A. Disseisor, and a Stranger make a Feoffment by Dedimus with warranty for them and their Heires to the Feoffee and his Heirs; The Feoffee brings a Warrantia Chartæ; and pendant the plea, the Disseisee enters. Quest. If the Warrantia Chartæ will lye? And admit that it will, If it shall abate by the entry of the Disseisee?

1. Point, When a Feoffment is made by a Disseisor and a Stran-

ger

ger by Dedimus, If the same be a joynt Warranty within the Statute de Bigamis?

I conceive the same to be only the Warranty of the Tenant.

2. Point, If the Warranty in fait annexed to the Warranty in Law, shall stand and supply the defect of the other, and in such sort operate, that the Stranger shall be bound by it?

3. Point, If the Entry of the Disseisee shall destroy the Execution; For if the Warrantia Chartæ be abated, then the means to have Execution is gone; for that is to have Execution of all the Land which the Feoffor had at the time of the Writ brought: For the other land is gone and discharged of the Warranty, by the Entry of the Disseisee.

Case

Case 69.

LEssee for life, the Remainder in Fee to Two; The Lessee grants his Estate to one of them in Remainder; the Grantee dyeth; He who hath the other moyety in Remainder grants his Reversion to a stranger and his Heires, as long as the Grantor shall have heir of his body, upon Condition that the stranger shall not alien his Estate within one year; the Grantor of the stranger ousted; The stranger bargains and sells by Deed enrolled for the life of the first Lessee for life within the year; the Lessee for life dyeth, the stranger Enters; his Lessor enters upon him; and he brings an Assise: And I conceive it lyes for a Moyety.

The first Point is upon the Grant

Grant of the Lessee to one of them in the Remainder, If the same shall enure by way of surrender for a moyety? And I conceive that it shall, and the joynt Estate in Remainder is severed by such Surrender.

2. When the Grantee dyes, I conceive that there shall be an Occupancy during the life of the Lessee; but the Estate of Inheritance of the Grantee by the severance of the Joynture, shall discend to his heir.

3. When he who hath a Remainder grants the same by the name of a Reversion; Or he who hath a Reversion, grants the same by the name of a Remainder; I conceive the Grant is good, if the Grant be not in possession at the time of such Grant.

4. I conceive, That then the Grant to his heirs tam diu &c. is a base Fee.

5. If

5. If this Condition, or any Condition can be annexed to a base Fee? I conceive that it may, although I conceive that this Condition is void for the abridgment of the power of the Terr-Tenant.

6. I conceive, That by the entry of the Grantor of the stranger, that there is a disseisin and suspension of the Rent.

7. I conceive, That admit that there is a good Condition, yet it is not broken by the Bargain and Sale, because although that it be an Alienation, yet the same is made by one out of possession notwithstanding the Inrollment of the Deed.

And the 8. He who made the Alienation, did not make an Alienation of his whole Estate, and therefore the Condition is not broken. And so the Assise lyeth for one moyety.

Case

Case 70.

LAnds are given to A. and a Feme Sole in special taile; A. aliens the whole; the woman enters, they entermarry and have issue, the Wife dyeth; Question, If he shall hold the Land by the Courtesie; and whether all the Lands, or the moyety, and shall be Occupant of the other moyety. Quære; for it is a good Case. But I conceive that the moyety of the husband is discontinued, and that there shall be a special Occupancy of the other moyety, and that there shall be no Tenancy by the Curtesie.

Case 71.

A Lease is made to two Women and to one man, the Remainder to the heirs of their bodies, and to J. S. the Women not being married: I conceive in this case, 1. That they take joyntly for their lives. 2. That the man takes several moyeties in tail, and takes as much as both the Women. And 3. That J. S. takes a joynt Estate for life.

Case 72.

A Man makes a Lease of a Seigniory for years, the Tenant Attorns; the Lord before the Statute of 27 H. 8. Releaseth to the Lessee and the Tenant all his Right to the use of a stranger. Quære, of whom he shall

shall hold, of the Tenant, or of Cestuy que use after the Statute.

Case 73.

A. Copyholder of an Advowson is presented to the same by B. a stranger, and the Lord; A. dyeth; B. assigns Dower to D. the Wife of A; she recovers Dower against E. the heir of A; B. dyeth; C. presents: D. and E. bring a Quare Impedit.

1. I conceive, That the Acceptance of the Presentment hath not extinct the Copyhold Estate, As a Rent taken for years, taken out of a Copyhold, doth not extinct the Copyhold; otherwise of a Lease, and in the first Case the Estate taken doth not include the Copyhold estate.
2. I conceive, That the stranger joyning in the Presentation, hath

hath gained a moyety in the Advowson, by Conclusion.

3. I conceive, That the Wife of a Copyholder, who hath forfeited his Estate in the Copyhold, shall be endowed if not that the Forfeiture doth impare the Inheritance; as it doth where the Copyholder commits Wast.

4. I conceive, That the Recovery of Dower being by plaint in a Base Court which is not of Record, that the Wife may wayve the Recovery, and resort to her first assignment.

5. I conceive in this Case, That D. and E. being Tenants in Common, may joyn in one Writ of Quare Impedit, although that the one hath an Estate in Fee in 2. parts, and the other for life in the third part.

Case

Case 74.

A Man deviseth 20 l. to his Daughter for her Marriage; and before his death gives 20 l. with his Daughter in Marriage and dyeth: The husband dyeth Intestate. Quære if the Daughter; the Administrator of the husband, or none of them shall have the said 20 l. I conceive the Daughter shall have it; And I conceive, That if a man deviseth his Land to another, and afterwards sells that Land by Deed which is not enrolled, so as it is void; yet it is a Countermand of the Will: but otherwise it is where he reserves an Estate to himself, so as the whole Estate is not gone.

Case 75.

A Lease for years is made unto an Alien upon Condition to have Fee; The Alien is made Denizen by Letters Patents, and then the Condition is performed.

Question 1. If the Alien, or the King shall have the Fee? I conceive that the Alien shall have it, and that it is not in the King immediately till Office found; as a Lease of a person Outlawed is for the King is entituled to that by the Record of the Outlawry, and the Office which is found afterwards is but an Office of an Instruction, and not of Entituling. But untill the King be entituled by Office to the Goods of an Alien, they are not in the King.

2. An

2. An Alien hath Issue and then is endenized; and afterwards the Alien with his Wife go beyond Sea ad terram sanctam to fight with the Enemies of Christ, and in sayling upon the Sea in the seigniory of the Turk, the Wife is delivered of a son: The Point is, If the son born of English Parents within the Dominions of other Lords, may have Land as a subject within this Realm? And I do conceive that he may; For that the place doth not take away the Allegiance of the Subject from the Soveraign.

2. If in this Case, the younger Brother may inherit, because the eldest Brother is an Alien? And I conceive he may, upon this difference, Where the eldest Brother never was a Subject inheritable, as in this Case of an Alien; and where he was

inheritable as the Eldeſt Son who is attainted in the life of his Father.

Caſe 76.

I. D. Tenant of Black Acre by Fealty, ſuit of Court, and 2 s. Rent of J. S: J. S. grants the Seigniory to A. if J. D. dyeth without heir; who Attorns, and dyeth without Heir: B. enters, and abates in Black Acre; And for the Rent and Suit A. Diſtrains, B. brings Aſſiſe:

1. Point, If the Grant of the Seigniory be good? I conceive that it is not good, firſt, becauſe that it is a forrein poſſibility, that the Tenant ſhould die without heir; and ſecondly, becauſe at the time when the Seigniory ſhould veſt, it is extinct by the Eſcheat, and not grantable. 2. Point,

2. Point, If by the Abatement the Seigniory be revived? I conceive it is not; For that things extinct cannot be revived. And there is a difference betwixt Wardship and Escheat; For the Lord may waive the Wardship and take the Services; but he cannot Waive the Escheat, for then the Freehold should be in Abeyance.

Case 77.

A Man binds himself and his heirs in an Obligation, and dyeth seised of Lands in Fee; his son enters and makes a Feoffment of the Land, and is sued for the Debt by an Original bearing date the day of his Feoffment; If the heir shall be bounden or discharged, is the Question. I conceive that he shall

be bounden; For that his plea in barre ought to be, That he is not in by Dilcent the day of the Writ brought, which shall be a false plea. And so it is if Executors plead such a plea. But if the Obligor himself alien the Land pendant the Writ, the land shall not be charged because his person remains chargeable, and his Land was not charged by the Common Law. And by 2 H. 4. the Land is lyable from the time of the Judgment, and the Goods from the date of the Execution. And where matter in fact and matter in Law encounter at one day; as a Feoffment of Knight Service Land in the forenoon by A, and by B. in the Afternoon to another, the Priority shall be enquired of for the Wardship of the heir; But where matter of Fact and of Record meet, there the matter of Record

lord shall be preferred. And I do conceive, That where the Lien is Auncestrel, as where the Auncestor is bound in an Obligation, Warranty, Covenant, or grant of an Annuity; there the heir shall not be bounden, but where the Auncestor and his heirs are bounden: but otherwise of Executors.

Case 78.

A. Seised of Lands in Fee out of which J. N. hath a Rent-Charge in Fee, Leaseth the Land to A. for life being the Villeine of B; J. N. grants the Rent-Charge to the Villein and his heirs, who accepts of the said Rent by the hands of the Grantee, and afterwards enters upon his Land as a perquisite of his Villein; The Villein brings

Assise. 1. Point, If there be an use executed in B. by the Statute of 27 H. 8. of Uses. And, 2. If the Acceptance of the Rent by the hands of the Tenant be an Enfranchisement? And for both Points, I conceive not. The first is a good point upon the Statute. If a Reversion be granted to one to the use of another; the Attornment shall be to Cestuy que use. So if Lands be given to one and the heirs of his body to the use of another, and the heirs of his body, untill Election made by the Donee, nothing vests in Cestuy que use, as I conceive. Quære.

Case

Case 79.

A Parson makes a Lease for years upon Condition to have for 3. Lives. If this Lease be within the Statute of Eliz. Vide 25 Eliz. Foxe and Colliers Case.

2. If a Parson of a Church in Middlesex be Consecrated a Bishop of Ireland, If it be a Cession for the Church in Middlesex? I conceive that it is, though there be no Authority in Law in the Point.

Case 80.

A. makes a Lease for life of White Acre to B. upon Condition that he shall not do Waste, in which there was a Fish-Pond

stored with Carps, Pikes and those Fry; C. destroyes all the Fish, B. being upon the Land; for which A. enters.

1. Point, If the destruction of all the Fishes and their Fry be Wast within the Statute of Glouc[illegible]ter?

I conceive that it is; For these are parcel of the Inheritance, as Deer within a Park inclosed are. But it was adjudged 29 Eliz. in Co. B. in Moile and Ewers Case, That where a Lease of a Minnor was in which was a Warren of Conies, and the Lessee destroyed the Conies, that the same was not Wast, because they were but Vermin, and the Land the better for want of them. And such was the Opinion of Walmesly, Justice, although that the Conies were in a Warren enclosed with a Pale or Wall. But the destroying

of

of Doves in a Dove-house is Waste. And it was adjudged, 9 Jac. in Co. B. in Sir Francis Palmers Case, That although the Cutting down of Underwoods be not Waste, yet the eradicating of them is Waste.

2. If the destruction of the Fish by a stranger, the Lessee being upon the Land and present, be Waste? And I conceive that it is: For Qui non vetat peccari cum possit, jubet: Et Consentientes et agentes pari plectentur pœna. And I conceive, That by the Statute of Glouc'ster, That if a man doth Waste, or suffereth another to do Waste, he shall encurre the penalty of that Law: As if a man be bounden, That he shall not do Waste, If a stranger doth it his Obligation is forfeited, and the Obligor is to guard the Land at his peril: But a Condition to defeat an Estate

shall never be said to be broken by the Act of a stranger. And therefore in the Case of a Copyhold, If the Custome be, That the Copyholder for Waste done shall lose his Estate: If a stranger commits the Waste, it shall not be a Forfeiture. For 3 things in Law shall be expounded strictly, scil. Conditions, Customes, and penal Statutes. As if the Custome be, That an Enfant at 15 years may make a Feoffment; he cannot make it by Attorney. And so it was adjudged 10 Jac. in Communi Banco, in Woodleys Case, upon the Penal Statute of E. 6. which is, That a man shall not buy dead Victual to sell the same again. Yet it was adjudged, That if a man buyeth Meale, and converts it into Starch, and so selleth it again; the sale of it is good, and it is not within the

Statute,

Statute, for it is not meerly the same thing.

Case 81.

A Rent is granted for the life of another man, the Remainder to the Right Heirs of J. S. Cestuy que vy dyeth.

1. Point, If there can be an Occupant of a Rent? I conceive generally there cannot be an Occupancy of a Rent, or of any other thing which lyeth in grant; but he ought to have a Deed and shew it to prove his Title: For if the Grantee of a Rent doth assign the same over, the Assignee cannot make Title to it without shewing forth both Deeds of it. Also the payment of the Rent to the Occupant, doth not conclude the Terre-Tenant who hath the Rent extinct

in-

in the Land; and the payment is but as a sum in grosse. And it was adjudged 40 Eliz. in Harpers Case, That if a man makes a Lease upon Condition to reenter for non-payment of the Rent at a day; And the Lessee payes it a moneth before the day, That it was but a summe in grosse, and the entry of the Lessor for not payment of the Rent at the day lawful.

2. Point, If there be Tenant for the life of another of a Rent, the Remainder to the Right Heires of J. S, and the Grantee dyeth in the life of Cestuy que vye; and a stranger receives the Rent, If he shall be such an Occupant of it as shall make him a good particular Tenant to support the Contingent remainder?

I conceive it shall. Vide the Opinion of Popham in Salters

Case,

Case, Mich. 44 Eliz. in B. R. Vide Mores Reports, 664. And Yelverton, 9. the same Case.

3. Point, The Grantee of a Rent-Charge acknowledgeth a Statute, and afterwards purchaseth the Land out of which the Rent is issuing; If the said Rent be extendable, forasmuch as the party by his own Act shall not avoid his Charge. Quære, For I conceive that by Act of Law the Rent is extinct. And so I conceive it was adjudged in C. B. in Dilling on and Duncombs Case.

Case 82.

A Man seised of Lands in Fee, deviseth the Land to another and his Heires males for ever; The Devisee makes a Lease for years upon Condition to have

Fee;

Fee; the Devisee dyeth; the Lessee grants over his Estate upon Condition, and enters for the Condition broken, and performs the first Condition; and the heir of the Devisee enters upon him.

1. Point, If the Devisee hath an Estate tail, or a Fee? Quære, If he shall not have Fee ratione intentionis; For in Wills, Statutes and Patents, the Intents of the parties are respected.

2. Point, If after the Assignment of the Estate of the Lessee, and Re-entry for the Condition broken, the Fee can accrue to him; Or if the privity be destroyed by the Assignment? I conceive that the Fee shall accrue.

Case

Case 83.

A. and B. make a Lease to J.S. and his Executors for the life of J.N. J.S. dyeth; a stranger enters; A. and B. grant the Reversion; A. enters into Religion: B. Attorns.

1. Point, If the Executors shall take as special Occupants, and prevent the entry of the stranger? And I conceive, that they shall not, because it is an Estate of Freehold. Vide 27 H. 6. Statham, Title Recognisance; Where an Estate was Conveyed unto another and his heires for the life of another; That in Debt brought against the Heir, he pleaded that he had not any Estate of Freehold or Frankelement discended to him.

Note, That it was adjudged in

in the Star-Chamber, That he in the Reversion might supply the place of an Occupant; For there the Case was, That after the death of Tenant for life, his Wife entred upon the Land and fed it with her Calfs: And it was holden, That she should not volens nolens be Occupant, but that he in the Reversion who entred after, should have the Estate for the life of Cestuy que vye.

2. Point, If the Attornment by one after the Entry of the other into Religion be good? And I conceive, that it is good; for that it is his own act; but otherwise it had been, if one of the Grantors had dyed.

Case 84.

TEnant in taile makes a Lease for one year rendring Rent, with Condition to have for the life of another, if the Lessee pay 10 l.

10 l. to the Lessor or his heirs; Tenant in tail dyeth; the Issue accepts the Rent; the Lessee dyeth, his Executor payes the 10 l. within the year, and continues the possession afterwards, and puts in his Cattel; the Issue in taile distrains them Damage Feasant; The Executor brings Replevin.

1. I conceive, That by the Acceptance of the Rent before the performance of the Condition, that it shall be a Discontinuance against the Issue in tail after the Condition performed; for this is his own Act; and the affirmance of the one Estate, shall be the affirmance of the other.

2. That the Executor cannot performe the Condition; for the Estate which should accresse upon the performance of the Condition is Freehold which is not Testamentary. But if the

accresser

accresser had been only for 100 years which is but a Chattel, and which doth appertain to the Executor; It had bin a performance, as I conceive.

Case 85.

A Bishop makes a Lease to husband and wife for so many years as J. S. shall name; The Dean and Chapter confirms it; J. S. names 21 years; the Bishop dyeth. The Successor bargains and sells to the husband and his heirs, the Deed not being enrolled; the husband dyed; the wife entred: Ceux que Droit.

1. I conceive that this Lease named by the stranger, (although it be but for 21 years) is not warranted by the Statute of 1 Eliz. for those Leases for lives

or

or years ought to be made by the Bishop without the Act of a third person or his Nomination.

2. I conceive that the Confirmation made before the Nomination, is not good.

3. I conceive, That by this Bargain and Sale to the Husband, although the Deed be not enrolled, so that but an Estate at Will passeth, yet that it is a surrender, they being Joyntenants by entierties of the Lease; For if Lessee for years accepts a Lease at Will from him in the Reversion, the same is a Surrender. And so it is, If he take a Rent-Charge, or a Bailywick from the Reversioner; as it was holden in Peacock and Gages Case.

Case

Case 86.

A Man deviseth Lands to another so long as J. S. shall have Issue of his body: J. S. dyeth, his wife with Child; The Devisor enfeoffeth another, and makes a Letter to make Livery, and dyeth before Livery made and executed.

1. Point, If by the death of J. S. without Issue in the life of the Devisor, the Devise be void, so as it shall not be made good by the birth of the Issue? I conceive it shall not.

2. Point, If the making of the Feoffment without Livery, shall not be a Countermand of the Devise? As if the Devisor after the Devise bargaineth and selleth, the same is a Countermand, because the Devisor hath done

done what in him is; for the Enrollment shall be done by the Bargainee. I conceive that it shall not.

Case 87.

A. Seised in Fee of Black Acre makes a Lease for life to B, the Remainder to C. in tail the Remainder to D. in taile; C. levies a Fine with proclamations upon Release unto E; F. younger Brother of C. of the half blood in a Deed-Poll inserts words of Release, and delivers the same to D. as an Escrowle to be delivered to E. as the Deed of F. at the pleasure of the baylee; C. dyeth without Issue; D. dyeth, B. dyeth, E. enters; the baylæ delivers the Escrowle as the Deed of Fee: F. enters; E. enters upon him; F. brings

Assise.

Assise. 1. Point, If the younger Mother of the half blood shall be barred by a Fine levied by the Elder Mother, being a Fine upon Release Executory, and not executed, which makes transmutation of possession?

And I conceive that he shall; for that the Statute of 32 H. 8. was made for the establishment of the possessions of all Conusees of Fines.

2. Point, If the Release made in such manner be good?

I conceive that it is, and that it shall barre F. the younger Mother.

Case 88.

A Man seised of Lands in Ancient Demesne makes a Lease for years, and covenants for him and

and his heirs, That the Lessee shall enjoy the same; The Lessor enters upon him, and dyeth: The Lessee brings Covenant against the Heir; I conceive it is maintenable.

1. I conceive, That although this Covenant be a personal Action, yet the heir being specially named shall be bound.

2. I conceive, That although the Land it self and the things rising upon it are pleadable there; as Accompt against the Baylee: Yet this Collateral, as this Case is, viz. that the Lessee shall enjoy the Land, is pleadable at the Common-Law.

Case

Case 89.

A. is bounden to B. in an Obligation upon Condition to make such Estate to B. and C. as the Councel of B. shall advise; The Councel deviseth, That an Estate shall be made to C, the remainder to B. in Fee: 1. I conceive, That the Obligee is to give Notice of the Estate devised. 2. I conceive, That the Condition is well performed by making such severall Estates. 3. I conceive, That reasonable time shall be for the performance of the Condition, by the Discretion of the Judges; because Discretio Judicis, est maxima pars Legis.

Case

Case 90.

TWo Joyntenants of an Advowson holden of the King in Knight-Service; The one grants his part to his Son and Heir apparent within age, and dyeth: The King seiseth the Ward, and presents to the Church being void; the other hings Quare Impedit.

1. Point, If the grant of the Advowson by one Joyntenant to his heir apparent, be apparent Collusion within the Statute of Marlbridge?

2. Point, If the King in this case can present before he is entituled by Office found?

Case 91.

HUsband and Wife have Issue, and are divorced for a cause which doth not barre the Issue; The Issue dyeth Goods, and dyes Intestate: Who shall have the Administration, is the Question. Some Opinion hath been, That the wife is the next of kin to have the Administration. But I conceive, that he who can first get it shall have the Administration; be it the wife, or the husband: for that the Father, Mother, and Son are as it were but one flesh. And so I conceive, That if the Middle Brother dyeth Intestate, the eldest or youngest which can first get it shall have the Administration. And I do conceive, That if the Ordinary doth not commit the

the Administration to the next of kin, he shall lose onely the penalty of 10 l; and the Administration granted to the Other shall stand good.

Case 92.

TWo Tenants in Common make a Lease for years rendring Rent, the one of them dyeth; Who shall have the Rent; Whether the Executor of the one, or the other Joyntenant? I conceive, That in this Case the Executor of the one and the other Joyntenant, may either joyn, or sever in Action for the Rent; but if it had been a Lease for life, there they ought of necessity to sever in Action.

Case 93.

If a Copyholder surrenders to the use of another, and Cestuy que use enters; If in Trespas brought by the Lord, he may justifie? I conceive that he may; and yet it hath been holden by divers, That before entry made by the Surrenderee, the Right remains in the Surrenderor; By which I conceive, That if a Copyholder soweth the Land, and surrenders to the use of another, that the Surrenderee shall not have the Tythes before entry at the least; Quære, if he shall have them before Admittance. If a man soweth his Land and makes a Feoffment of it, and the Deed is delivered without Livery and Seisin: I conceive that the Emblements

will

will not passe before Livery be made of the Land.

Case 94.

A Copyholder of an Acre of Land to which an Advowson is appendant, makes a Lease for 10 years with Licence; The Lessee grants the next Avoydance si acciderit infra tempus prædict'; The Lessee for 10. years surrenders to the Copyholder; and before the 10 years expired, the Church becomes void; the Grantee presents; the Grantor disturbs him; the Grantee brings Quare Impedit.

1. Point, If the Grantee may have Quare Impedit, the Terme being determined by the Surrender?

2. Point, If the Surrender be good, because that he who hath

the Lease at the Common Law, surrenders the same to him who is but Tenant at Will in Judgment of Law, being a Copyholder.

3. If an Advowson may be Appendant to Copyhold Land; because that both ought to be by prescription? Quære; I conceive for that cause it cannot.

Case 95.

A Copyholder of Inheritance comes to the Court of the Lord, and saith in his presence, That he will hold his Copyhold no longer: Question, If the same be a Surrender? I conceive, That it is not; no more then if a man maketh a Lease for life, the Remainder in Fee, and he in the Remainder saith in Pais, That he will not have the Remainder, the

the same is to no purpose being a Freehold. Otherwise it may be perhaps of a Joynture: but Quære of it, Co. 4. part, Vernons Case. But if a Copyholder saith to his Lord, Give me 10 l. for my Copyhold and take it; and the money is paid and entred into the Roll; Whether the same be done in Court, or out of Court, I conceive it is a Surrender.

Case 96.

A Man seised of Land Deviseable makes a Lease for years rendring Rent, upon Condition that the Term shall cease if the Rent be not paid; The Lessor Deviseth the Rent and dyeth; The Rent is behind; The Heir enters for the Condition broken; If his Entry be lawful?

1. I conceive that this Rent may be well Devised by the Common Law, because it is of the nature of the Land which is the principal. Vide 4 E. 3. acc.

2. If the Terme shall cease without demand of the Rent? Quære, for it is a good point.

3. If the Heir may demand it to defeat the Lease? I conceive he cannot do it, for that it doth not belong to him: But I agree, That if a man makes a Lease rendring Rent upon Condition of Entry for not payment, If the Lessor granteth the Reversion, That the Grantee may enter for the Condition, by the Statute of 32 H. 8. But if the Condition had been Collateral, as to pay 10 l. to a Stranger; then the Grantee should not enter for such Condition by the said Statute.

Case

Case 97.

PArson, Patron, and Ordinary make a Lease for years of the Glebe Lands, and the Parson dyeth, and the Lessee is made Parson; If the Lease for years be gone, is the Question? I conceive, that it is gone, against the Opinion of Carlyn in Bracebridge and Cook's Case; for he hath both Estates in his own Right: Otherwise it is where the Lessee makes his Lessor his Executor. Vide 26 Eliz. in Sir Francis Flemings Case, Where Sir Francis was Lessee for years of certain Lands, which did belong to a Commaundry; and afterwards he was made Commaundor, that thereby the Lease was gone. Quere of it; For I conceive it is not, because he hath them in several Rights.

Case 98.

A Man seised of White Acre and Black Acre, hath Issue a Son and a Daughter by one Woman, and hath Issue a Son by another; The Son enters into White Acre generally, and makes a Lease of both Acres for as many years as J. S. shall name: J. S. sayes that the Lesse shall have Black Acre for two years. 1. Point, If this general Entry be sufficient to make a Possessio fratris of both Acres? I conceive that the Entry into one is good for both; for a possession in Law discends to the Heir. 2. If this Lease of both Acres as before shall make possessio fratris, admitting the Entry not good for both Acres. Quære.

Case

Case 99.

TEnant in tail the Reversion in the King, grants his Land in Exchange to the King in Fee for other Land, and levieth a Fine to the King; If the Exchange be good. Quære. It being a Question upon a Special Verdict in B. R. I conceive it is not. See the Statute of 32 H. 8. of Fines.

Case 100.

TWo Coparceners in Fee of two Acres make Partition, the one makes a Feoffment in Fee of her part, and takes back an Estate again in Fee; The Coparcener which did not alien is impleaded, and a Recovery is had against her.

Question,

Question, If she shall deraign the Warranty paramount, and shall recover the moyety against her sister? I conceive that she shall. And I conceive, That one Coparcener shall have Aide of the other after Partition made. Vide 43 E 3. & 11 H. 4. 23. but not before Partition, for then the Præcipe shall be brought against them joyntly. And I conceive, That although one Coparcener after Partition levieth a Fine of her part, and the 5. years passe, and the part of the other Coparcener is evicted, That in such case she shall have in value against the Conusee, because she claims by a Title paramount the Fine. And I conceive, That if two Coparceners make Partition, and by reason of a former Grant by their Ancestor, a Rent to the value of her part is recovered against the

one,

one, That in such case she cannot enter into the part of her Sister, because that no Eviction is of the thing of which the Partition was, scil. of the Land, but of another thing, scil. the Rent.

Case 101.

The King gives Lands to the Queen and her Heires for the life of another; The Queen is disseised; The Disseisor dyeth, his Heir enters; the Queen enters upon him; and he brings an Assise: In this case, I conceive, 1. That the Queen hath an Estate for life, and that she is a Feme Sole at the Common Law, and also by the Statute of 32 H. 8. And that the Queen is capable of the Guift of the King either of Lands or Goods, and she being a Feme-Covert

Covert may take and be seized in her own right; and she shall have all Personal Prerogatives, as the King. As if she be an Alien, she need not be Endenized, because by the very Marriage she is endenized. So if the King Marrieth with a Subject who is Wave; she is restored to the Law. But I conceive, That a Lease for life made by the Queen, or to her, is not good without Livery.

2. If the Queen may be disseised? And I conceive that she may.

And 3. That Assise will lye against her.

Case

Case 102.

If a Rent be granted out of Lands in the County of York, and out of Land in the County of Durham, to one and the heirs of his body; I conceive that this is a Rent perpetual; and that no Recovery, nor Fine can be upon it, being in several Counties: For several Writs of Covenant cannot be brought in each County, the Rent being entire. And a Writ of Entry in the Post is not within the Statute of 6 R. 2. which sayes, That Actions shall be brought in their proper Counties. Quære; for it is a good Case.

Case 103.

THe Tenant enfeoffeth the Lord for life rendring Rent; If the Lord shall do Fealty to the Tenant, is the Question? I conceive that he shall not, but that the Corporal Service is suspended, although that the Rent doth remain. Quære; If the Tenant dyeth without Heir, If his Lord whose Seignory is in suspence, shall have the Escheat, or the Lord Paramount.

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